

DOCKET FILE COPY ORIGINAL
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

RECEIVED

SEP - 2 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission - Mail Stop 1170

**PARTIAL OPPOSITION TO SUPPLEMENT TO PETITION FOR
RECONSIDERATION OF SKINNER BROADCASTING, INC.**

1. On August 22, 1997, Skinner Broadcasting, Inc. ("Skinner") filed a "Supplement to Petition for Reconsideration" in which it urges the Commission to replace the digital allotments of television channels 27 and 28 at West Palm Beach, Florida, with Channels 58 and 41 respectively. Skinner is the licensee of low power television ("LPTV") station W27AQ, Fort Lauderdale, Florida, and seeks to protect that station from the displacement that would result from the allotments made in the *Sixth Report and Order* in this proceeding.

2. Sherjan Broadcasting Co., Inc. ("Sherjan"), licensee of WJAN-LP, Channel 41, Miami, Florida, hereby opposes Skinner's proposal to allot Channel 41 for digital TV at West Palm Beach -- an allotment that would displace WJAN-LP. Sherjan was unable to file this Opposition earlier, because Skinner's proposal to allot digital Channel 41 at West Palm Beach did not become publicly known until August 22, 1997.

3. Skinner first asks that if W27AQ be displaced, Skinner should receive a license to operate on a Class A FM channel or else should be compensated financially for the loss of its

No. of Copies rec'd
List ABCDE

024

investment. Sherjan does not oppose either of those proposals and agrees that displacement of W27AQ, or any other LPTV station, is undesirable and contrary to the public interest and that Skinner should be compensated in some way if it is forced to suffer the loss of its TV station. On the other hand, there is no justification for selecting Channel 41 for digital use at West Palm Beach, because as discussed below, Skinner's Supplement is procedurally and substantively defective.

4. Skinner's proposal is procedurally defective because it comes too late in this proceeding. The appropriate time for filing was June 13, 1997, when petitions for reconsideration were due. The August 22 deadline was for supplements to previous proposals. Skinner's proposal is a new one, not a "supplement" to an old one, and so comes too late.

5. Substantively, Skinner fails to provide the engineering data necessary for the Commission to evaluate the proposal on the merits. No showing is made that Skinner's proposed Channel 41 and 58 allotments would comply with all applicable mileage separations to both NTSC and DTV stations or that they would result in as much digital replication of the NTSC service areas of WFLX and WXEL (the stations for whom the channels would initially be made available) as Channels 27 and 28. These factors are critical to a determination of the merits of the proposal. Skinner bears the burden of providing the Commission with the necessary information and has not met that burden.

6. In addition, Skinner's proposed allotment of Channel 58, for use by WXEL-TV, would be both inconvenient and costly to WXEL-TV, because it is outside the "core" band of Channels 2-46 or Channels 7-51 and so would require WXEL-TV to build on one channel and

eventually to bear the cost of moving to another. The problem of two construction projects does not exist for WXEL-TV on Channel 27.^{1/}

7. Skinner's proposal to favor the oldest LPTV station regardless of the cost to other LPTV stations is way out of order. Skinner offers no citation in support of its proposal. The principle of favoring first in time applies to resolving interference situations, not making channel allotment decisions. Allotment decisions must be governed by Section 307(b) of the Communications Act, a statutory mandate which requires a fair and equitable distribution of frequencies throughout the nation and does not incorporate any seniority factor.^{2/} Skinner states that it proposes to displace two low power television ("LPTV") stations to favor its one station; but in fact, as shown in the attached Engineering Statement of duTreil, Lundin, and Rackley, Inc., its proposal would displace four LPTV stations to save two. Digital Channel 41 would displace WJAN-LP; and digital Channel 58 would displace W58BU, Hallandale, W58CA, Port St. Lucie, and W59DF, Jupiter (all Florida).^{3/} A net reduction of two in television voices in the area would be contrary to the objectives of Section 307(b).^{4/}

^{1/} WXEL-TV is a public television station and so is less able than many NTSC stations to afford the cost of multiple digital build-outs.

^{2/} Recognizing longevity may reward business investment, which is a worthwhile activity; but the Commission's statutory responsibility is to maximize service to the viewing public.

^{3/} While W58CA and W59DF are construction permits rather than licensed stations, they still represent valuable potential service to the public. Both are licensed to communities that have no local full power television station. The Commission's proposal might displace W27AE, Sebring, Florida, as well as Skinner's W27AQ; but Skinner's proposal would still displace four stations to save two and thus would violate Section 307(b) by reducing the number of voices serving the public.

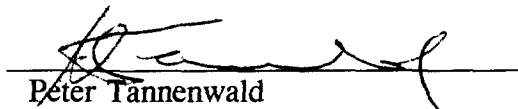
^{4/} By way of analogy, when the Commission is faced with competing proposals for the same FM allotment in two different communities, it always seeks to fulfill the purposes of Section (continued...)

9. Finally, it should be noted that it is not necessary to displace either W27AQ or WJAN-LP to accommodate the transition to digital television. The proposed digital TV allotment table submitted to the Commission on August 22, 1997, by the Community Broadcasters Association ("CBA"), as a supplement to the table CBA submitted in June, 1997, would not require the displacement of either LPTV station. A copy of the section of that table pertaining to Florida is attached. It shows no allotments on Channels 26, 27, or 28 near West Palm Beach.

10. In light of the foregoing, Sherjan respectfully submits that Skinner's proposed changes to the digital allotment table must be rejected. Sherjan agrees that every effort should be made to avoid displacing W27AQ -- but without subjecting others to the hand of the executioner in the process. If W27AQ must be displaced, every effort should be made to find another suitable channel for that station. Failing that, Sherjan supports compensation to Skinner for its loss.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

Respectfully submitted,


Peter Tannenwald


Elizabeth A. Sims

September 2, 1997

Counsel for Sherjan
Broadcasting Co., Inc.

4/(...continued)

307(b) by finding a second channel so that there will be two voices rather than only one. *See, e.g., FM Table of Allotments (Burlington, CO; Brewster, KS)*, 11 FCC Rcd. 8642, 8644 (MM Bur., 1996).

TECHNICAL STATEMENT
SUPPORTING THE PARTIAL OPPOSITION FROM
SHERJAN BROADCASTING CO., INC.

This Technical Statement has been prepared on behalf of Sherjan Broadcasting CO., Inc. (Sherjan), licensee of low power television (LPTV) station WJAN-LP on channel 41 at Miami, Florida. The statement supports Sherjan's "Partial Opposition to the Supplement to Petition for Reconsideration" filed on August 22, 1997 by Skinner Broadcasting, Inc. (Skinner). The Skinner filing was made with reference to the Federal Communications Commission (FCC) Sixth Report and Order in MM Docket No. 87-268 (advanced television systems and their impact upon the existing television service).

Skinner proposes digital television (DTV) channel 41 instead of 28 for station WFLX on analog channel 29 at West Palm Beach. Skinner also proposes DTV channel 58 instead of 27 for station WXEL-TV on analog channel 42 at West Palm Beach. It is noted that DTV channel 58 would be outside the FCC's proposed core spectrum.

The Skinner request for DTV allotment changes does not appear to be in suitable form for FCC consideration. Exhibits pertaining to the proposed effective radiated power (ERP) values on the suggested DTV channels were not provided. Separation study comparisons between the FCC and Skinners proposed DTV channels to other analog and DTV assignments were not provided. Potentially impacted analog and DTV assignments were not identified. No exhibits were

provided concerning interference, service or degree of replication in accordance with the methods reflected in FCC's DTV allocation process and OET-69.

The following is a comparison of pertinent separations for the DTV channels proposed by the FCC and Skinner for station WFLX.

FCC DTV Channel 28

<u>Station</u>	<u>Channel</u>	<u>Bearing</u>	<u>Separation</u>	<u>FCC Requirement</u>
WTCE, Fort Pierce, FL	21 NTSC	353 deg.	95.8 km	None 24.1 - 96.6 km
WPBF, Tequesta, FL	25 NTSC	346	62.2	None 24.1 - 96.6 km
W27AQ, Fort Lauderdale, FL	27 LPTV	159	41.3	LPTV Displaced
WFTS, Tampa, FL	28 NTSC	306	244.4	244.6 km

Skinner DTV Channel 41

<u>Station</u>	<u>Channel</u>	<u>Bearing</u>	<u>Separation</u>	<u>FCC Requirement</u>
WBFS-TV, Miami, FL	33 NTSC	177 deg.	67.7 km	None 24.1 - 96.6 km
WTVX, Fort Pierce, FL	34 NTSC	346	62.2	None 24.1 - 96.6 km
WDZL, Miami, FL	39 NTSC	176	66.3	None 24.1 - 96.6 km
W41BF, Miami, FL	41 LPTV	191	90.8	LPTV Displaced
WHFT, Miami, FL	45 NTSC	174	65.1	None 24.1 - 96.6 km

The following is a comparison of the pertinent separations for the proposed FCC and Skinner DTV channels for station WXEL-TV.

FCC DTV Channel 27

<u>Station</u>	<u>Channel</u>	<u>Bearing</u>	<u>Separation</u>	<u>FCC Requirement</u>
WLTW, Miami, FL	23 NTSC	178 deg.	67.4 km	None 24.1 – 96.6 km
WPBF, Tequesta, FL	25 NTSC	346	62.2	None 24.1 – 96.6 km
W27AQ, Fort Lauderdale, FL	27 LPTV	159	41.3	LPTV Displaced
W27AE, Sebring, FL	27 LPTV	310	151.0	Probably Displaced
WZWY, Orlando, FL (App)	27 NTSC	338	203.6	244.6 km
WZWY, Orlando, FL (CP)	27 NTSC	325	260.2	244.6 km (OK)
WTVX, Fort Pierce, FL	34 NTSC	346	62.2	None 24.1 – 96.6 km

Skinner DTV Channel 58

<u>Station</u>	<u>Channel</u>	<u>Bearing</u>	<u>Separation</u>	<u>FCC Requirement</u>
WSCV, Fort Lauderdale, FL	51 NTSC	177 deg.	67.7 km	None 24.1 – 96.6 km
W58BU, Hallandale, FL	58 LPTV	176	65.7	LPTV Displaced
W58CA, Port St. Lucie (CP)	58 LPTV	359	70.7	LPTV Displaced
W59DF, Jupiter, FL (CP)	59 LPTV	17	42.0	LPTV Displaced
Stuart, FL (Apps.)	59 NTSC	7	50.1	None 9.7 – 88.5 km

As indicated by the above separation tables, the FCC's proposed DTV allotments at WFLX and WXEL-TV would displace 2 authorized LPTV stations (W27AQ and probably W27AE). Skinner's proposed DTV allotments would displace 4 authorized LPTV stations (WJAN-LP, W58BU, W58CA and W59DF).

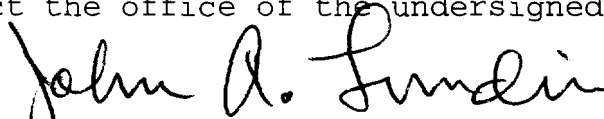
du Treil, Lundin & Rackley, Inc.

A Subsidiary of A.D. Ring, P.A.

Sherjan Broadcasting Co., Inc.

Page 4 of 4

If there are questions concerning this technical statement, please contact the office of the undersigned.

A handwritten signature in cursive script that reads "John A. Lundin".

John A. Lundin

du Treil, Lundin & Rackley, Inc.
240 N. Washington Boulevard, Suite 700
Sarasota, Florida 34236

(941) 366-2611

August 29, 1997

COST OF NEW ASSIGNMENTS

sta	city	cur NTSC	new DTV	base cost	mutual cost	combined
* 1671	CO RULISON, ETC.	66				
* 1672	CO SILT, ETC.	47				
224	CO STEAMBOAT SPRINGS	24	14	3.57	.00	3.57
225	CO STERLING	3	40	24.11	.00	24.11
226	CT BRIDGEPORT	43	6	257.08	.87	257.95
227	CT BRIDGEPORT	49	12	180.64	.00	180.64
* 1673	CT DANBURY	22				
229	CT HARTFORD	18	60	1199.99	.00	1199.99
230	CT HARTFORD	24	34	20.00	1000.00	1020.00
231	CT HARTFORD	61	46	34.24	1149.63	1183.87
228	CT HARTFORD	3	35	22.50	1046.31	1068.81
232	CT NEW BRITAIN	30	29	.02	7.11	7.13
233	CT NEW HAVEN	8	16	572.91	.00	572.91
234	CT NEW HAVEN	59	58	137.64	.13	137.77
235	CT NEW HAVEN	65	32	17.31	1000.00	1017.31
236	CT NEW LONDON	26	63	802.21	.00	802.21
237	CT NORWICH	53	45	34.01	181.37	215.38
238	CT WATERBURY	20	32	17.20	1000.00	1017.20
246	DC WASHINGTON	50	51	10.96	42.24	53.19
239	DC WASHINGTON	4	36	35.11	1000.00	1035.11
240	DC WASHINGTON	5	30	15.50	1000.72	1016.22
241	DC WASHINGTON	7	33	231.65	12.56	244.21
* 1674	DC WASHINGTON	58				
* 1675	DC WASHINGTON	64				
242	DC WASHINGTON	9	63	1200.00	.00	1200.00
243	DC WASHINGTON	20	69	800.36	.00	800.36
244	DC WASHINGTON	26	35	34.32	.00	34.32
245	DC WASHINGTON	32	6	379.26	.00	379.26
247	DE SEAFORD	64	44	27.68	12.70	40.38
* 1676	DE TALLEYVILLE	55				
249	DE WILMINGTON	61	31	36.70	54.92	91.62
248	DE WILMINGTON	12	36	21.45	1000.00	1021.45
250	FL BRADENTON	66	52	43.33	100.64	143.97
251	FL CAPE CORAL	36	35	10.81	.00	10.81
252	FL CLEARWATER	22	5	41.08	82.31	123.39
253	FL CLERMONT	18	30	29.46	.16	29.62
254	FL COCOA	52	49	35.11	5.06	40.17
255	FL COCOA	68	42	31.28	55.27	86.55
256	FL DAYTONA BEACH	2	31	17.72	2.83	20.55
257	FL DAYTONA BEACH	26	32	26.76	.00	26.76
* 1677	FL DE FUNIAK SPRINGS	24				
* 1678	FL DESTIN	48				
258	FL FORT LAUDERDALE	51	52	.00	7.95	7.95
* 1680	FL FORT LAUDERDALE	27				
* 1682	FL FORT MYERS	67				
261	FL FORT MYERS	30	15	42.53	.00	42.53
259	FL FORT MYERS	11	53	35.98	92.70	128.68
260	FL FORT MYERS	20	55	40.03	.00	40.03
* 1681	FL FORT MYERS	7				
262	FL FORT PIERCE	21	22	.04	.00	.04
263	FL FORT PIERCE	34	3	55.22	.01	55.23
264	FL FORT WALTON BEACH	35	19	5.51	3.64	9.15
265	FL FORT WALTON BEACH	53	54	.00	.00	.00
266	FL FORT WALTON BEACH	58	59	.02	5.05	5.07
267	FL GAINESVILLE	5	42	25.89	35.46	61.35
268	FL GAINESVILLE	20	28	18.79	.00	18.79
269	FL HIGH SPRINGS	53	54	.20	49.36	49.56
270	FL HOLLYWOOD	69	50	33.28	.00	33.28
271	FL INVERNESS	64	34	19.61	.00	19.61

COST OF NEW ASSIGNMENTS

sta	city	cur NTSC	new DTV	base cost	mutual cost	combined
276	FL JACKSONVILLE	30	14	.89	.00	.89
277	FL JACKSONVILLE	47	10	9.34	.00	9.34
278	FL JACKSONVILLE	59	38	22.72	.00	22.72
272	FL JACKSONVILLE	4	33	21.81	4.36	26.18
273	FL JACKSONVILLE	7	29	17.83	3.25	21.08
* 1683	FL JACKSONVILLE	36				
* 1684	FL JACKSONVILLE	41				
274	FL JACKSONVILLE	12	13	3.46	.00	3.46
275	FL JACKSONVILLE	17	16	.00	.00	.00
279	FL KEY WEST	8	12	.00	.00	.00
280	FL KEY WEST	22	3	.00	.01	.01
* 1685	FL KISSIMMEE	40				
* 1686	FL LAKE CITY	23				
* 1687	FL LAKE CITY	48				
281	FL LAKE WORTH	67	57	39.28	4.48	43.77
282	FL LAKE LAND	32	33	.47	4.36	4.83
* 1688	FL LAKE LAND	14				
283	FL LEESBURG	45	46	.00	.00	.00
284	FL LEESBURG	55	57	49.00	4.48	53.48
285	FL LIVE OAK	57	18	5.10	.00	5.10
287	FL MELBOURNE	56	7	14.83	.00	14.83
286	FL MELBOURNE	43	4	20.19	.00	20.19
290	FL MIAMI	6	58	41.96	.00	41.96
291	FL MIAMI	7	8	3.61	.00	3.61
292	FL MIAMI	10	9	1.64	.00	1.64
293	FL MIAMI	17	49	33.52	5.06	38.59
294	FL MIAMI	23	24	.19	.00	.19
295	FL MIAMI	33	32	.27	144.91	145.18
* 1690	FL MIAMI	21				
* 1691	FL MIAMI	41				
296	FL MIAMI	35	20	8.86	.00	8.86
297	FL MIAMI	39	38	.10	.00	.10
298	FL MIAMI	45	44	.21	.00	.21
288	FL MIAMI	2	47	30.50	1.46	31.96
289	FL MIAMI	4	48	31.30	1.71	33.01
* 1692	FL NAPLES	2				
* 1693	FL NAPLES	9				
300	FL NAPLES	46	18	4.53	.00	4.53
299	FL NAPLES	26	43	26.94	.00	26.94
301	FL NEW SMYRNA BEACH	15	21	10.16	.00	10.16
302	FL OCALA	51	11	1.09	.00	1.09
303	FL ORANGE PARK	25	44	27.78	.00	27.78
309	FL ORLANDO	65	17	17.07	.00	17.07
304	FL ORLANDO	6	23	19.26	.00	19.26
305	FL ORLANDO	9	58	40.52	143.86	184.38
306	FL ORLANDO	24	20	23.67	.00	23.67
307	FL ORLANDO	27	59	55.54	151.29	206.83
308	FL ORLANDO	35	36	5.59	.00	5.59
* 1694	FL PALATKA	49				
310	FL PALM BEACH	61	54	36.65	9.58	46.23
* 1695	FL PANAMA CITY	22				
311	FL PANAMA CITY	7	8	18.04	.00	18.04
312	FL PANAMA CITY	13	30	15.40	.00	15.40
313	FL PANAMA CITY	28	20	6.25	.00	6.25
314	FL PANAMA CITY	56	33	26.87	.00	26.87
315	FL PANAMA CITY BEACH	46	14	2.10	.00	2.10
319	FL PENSACOLA	44	45	.29	.00	.29
316	FL PENSACOLA	3	50	35.28	.02	35.29
* 1696	FL PENSACOLA	8				

COST OF NEW ASSIGNMENTS

sta	city	cur NTSC	new DTV	base cost	mutual cost	combined
* 1697	FL PENSACOLA	12				
* 1698	FL PENSACOLA	31				
* 1699	FL PENSACOLA	39				
317	FL PENSACOLA	23	27	12.61	.00	12.61
318	FL PENSACOLA	33	34	.77	34.46	35.22
320	FL SARASOTA	40	41	.00	26.19	26.19
* 1700	FL SEBRING	60				
* 1701	FL ST. AUGUSTINE	22				
* 1703	FL ST. PETERSBURG	60				
323	FL ST. PETERSBURG	44	48	31.55	1.71	33.26
321	FL ST. PETERSBURG	10	26	71.75	.74	72.49
322	FL ST. PETERSBURG	38	47	30.57	1.46	32.03
* 1702	FL ST. PETERSBURG	24				
* 1704	FL STUART	16				
325	FL TALLAHASSEE	27	26	.00	.74	.74
* 1705	FL TALLAHASSEE	65				
326	FL TALLAHASSEE	40	41	.00	.00	.00
324	FL TALLAHASSEE	11	15	9.17	2.60	11.77
332	FL TAMPA	50	51	14.91	10.40	25.32
327	FL TAMPA	3	39	1199.58	.00	1199.58
328	FL TAMPA	8	54	36.70	49.36	86.06
329	FL TAMPA	13	12	10.90	.00	10.90
* 1706	FL TAMPA	18				
* 1707	FL TAMPA	57				
* 1708	FL TAMPA	68				
330	FL TAMPA	16	63	997.00	.00	997.00
331	FL TAMPA	28	29	2.78	3.25	6.03
* 1709	FL TAMPA-ST. PETERSBURG	20				
333	FL TEQUESTA	25	40	27.61	.00	27.61
334	FL TICE	49	5	25.57	82.31	107.88
335	FL VENICE	62	42	26.95	81.46	108.41
* 1710	FL VERO BEACH	10				
* 1711	FL WEST PALM BEACH	36				
336	FL WEST PALM BEACH	5	19	9.13	.00	9.13
337	FL WEST PALM BEACH	12	13	11.49	.00	11.49
338	FL WEST PALM BEACH	29	31	17.78	147.58	165.35
339	FL WEST PALM BEACH	42	59	41.62	7.43	49.05
* 1712	GA ALBANY	35				
341	GA ALBANY	31	32	.00	0.00	0.00
340	GA ALBANY	10	52	34.96	.00	34.96
342	GA ATHENS	8	42	31.78	7.16	38.94
343	GA ATHENS	34	38	43.63	38.55	82.18
350	GA ATLANTA	46	45	15.36	9.05	24.42
351	GA ATLANTA	57	48	532.19	0.00	532.19
352	GA ATLANTA	69	55	37.76	23.95	61.70
344	GA ATLANTA	2	51	33.93	7.39	41.31
345	GA ATLANTA	5	50	33.11	20.00	53.11
346	GA ATLANTA	11	10	28.61	.00	28.61
347	GA ATLANTA	17	23	358.39	.03	358.42
* 1713	GA ATLANTA	4				
* 1714	GA ATLANTA	24				
* 1715	GA ATLANTA	40				
348	GA ATLANTA	30	31	3.88	10.18	14.06
349	GA ATLANTA	36	20	14.89	.00	14.89
* 1716	GA AUGUSTA	67				
354	GA AUGUSTA	12	59	41.95	3.30	45.25
355	GA AUGUSTA	26	30	24.68	2.88	27.56
356	GA AUGUSTA	54	36	27.18	.57	27.74
353	GA AUGUSTA	6	44	29.15	.52	29.67

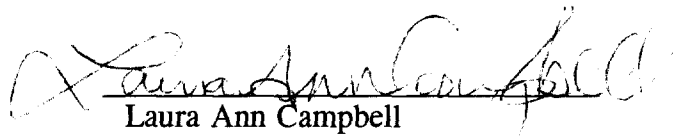
CERTIFICATE OF SERVICE

I, Laura Ann Campbell, do hereby certify that I have, this 2nd day of September, 1997, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing Partial Opposition to Supplement to Petition for Reconsideration of Skinner Broadcasting, Inc. to the following:

Skinner Broadcasting, Inc.
6431 N.W. 65th Terrace
Pompano Beach, FL 33067-1546

Malcolm Stevenson, Esq.
Schwartz, Woods & Miller
1350 Connecticut Ave., N.W., Suite 300
Washington, D.C. 20036
Counsel for South Florida Public
Telecommunications, Inc. (WXEL-TV)

Jason Shrinsky, Esq.
Kaye, Scholer, Fireman, Hays & Handler
901 - 15th St., N.W., Suite 1000
Washington, DC 20005
Counsel for Malrite Communications
Group, Inc. (WFLX)


Laura Ann Campbell